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Supreme Court of the United States

OCTOBER TERM, 1951

No. 299

THE UNITED STATES OF AMERICA, CLAIMANT, PETITIONER,

versus

N. WALSER EDENS AND W. H. CORRY, AS TRUSTEES OF CAROLINA MILLS, INC., A CORPORATION OF SOUTH CAROLINA, DEBTOR.

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

HENRY HAMMER,
Attorney for Respondents.

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THE OPINIONS OF THE COURTS BELOW

The Report of the Referee, the opinions of the District Court and the Court of Appeals are adequately referred to in the petition for writ of certiorari. (P. 2.)

JURISDICTION

The jurisdictional requirements are adequately set forth in the petition for writ of certiorari. (P. 1-2.)

STATEMENT OF CASE

The statement of the case is adequately set forth in the petition for writ of certiorari. (P. 2-3.)

QUESTION INVOLVED

Does claim of United States for unpaid taxes in a corporate reorganization proceeding under Chapter X of the National Bankruptcy Act bear interest subsequent to the date of the approval and filing of the petition?

ARGUMENT

It is the contention of respondents that, although the question presented involves a considerable amount of money and is of importance in the administration of the National Bankruptcy Act, the petition should be dismissed because: (1) there is no conflicting decision by any other Circuit Court of Appeals and (2) the decision of the Court of Appeals is clearly correct.

As pointed out by the Government in its petition, not only is there an absence of conflicting decisions among the Courts of Appeal of the circuits, but the decisions reflect harmony of opinion that interest on tax claims should cease to accrue after the beginning of proceedings. *United States v. General Engineering & Manufacturing Company*, 188 F. (2d) 80. (8th Cir.); *Massachusetts v. Thompson*, 190 F. (2d) 10. (1st Cir.)

It is respectfully submitted that the decision of the Court of Appeals is clearly correct, having been decided in accordance with the settled decisions of this Court and the applicable statutory provisions of the National Bankruptcy Act.

The Government, in its petition at page 10, contends that interest is not cut off on claims generally in Chapter

X reorganization proceedings. This Court settled this issue adversely to the contention of the Government in the case of *Vanston Bondholders Protect. Com. v. Green*, 329 U. S. 156, 91 L. Ed. 162, a proceeding under Chapter X of the Act. Mr. Justice Black, speaking for the Court, at page 163, said:

> "The general rule in bankruptcy and in equity receivership has been that interest on the debtors' obligations ceases to accrue at the beginning of the proceedings."

And this Court in the case of *City of New York v. Saper*, 336 U. S. 328, held that in straight bankruptcy proceedings interest on taxes ceases to accrue after the filing of a petition, thus according taxes the same treatment as other claims with respect to interest.

That tax claims in reorganization proceedings, like in straight bankruptcy proceedings, are in the same category and accorded the same treatment as other debts has been conclusively determined by this Court in the case of *Gardner v. New Jersey*, 329 U. S. 565. And it is expressly provided in Section 200 of Chapter X of the National Bankruptcy Act (11 U. S. C. A. 600), quoted at page 17 of the Appendix to the petition, that the "rights, duties, and liabilities of creditors and of all other persons with respect to the property of the debtor shall be the same, before approval of the petition, as in bankruptcy proceedings before adjudication, and, upon approval of the petition, as in bankruptcy proceeding upon adjudication." Reference to Section 106, of Chapter X of the Act, subdivision (1), which defines "claims", subdivision (4), which defines "creditor", and subdivision (6), which defines "debts", leaves no doubt that taxes in reorganization proceedings are assimilated to debts for all purposes, includ-

ing denial of interest on taxes which accrue after date of the filing of the petition.

The Government, in support of its petition, advances the argument that under the strict and absoute priority rule beginning with the topmost class of claims against debtor, each class of claimants in descending right must be fully and completely compensated before the next class below may properly participate. We have no quarrel with this principle, but sharply disagree with the Government's interpolation that payment of interest subsequent to the approval of the petition is included within the meaning of such rule. *Sexton v. Dreyfus,* 219 U. S. 339; *Vanston Bondholders Protect. Com. v. Green, supra.* Moreover, petitioner is not a secured creditor, and therefore, like other general creditors, regardless of any priority status it may have under the Act, is not entitled to interest accruing subsequent to the date of the filing of the petition.

Also, it may be noted that the Act does not provide for interest on tax claims, or otherwise, accruing subsequent to the filing of the petition. And we submit that, quoting from the opinion of the Honorable J. Waties Waring, United States District Judge, "it would have been so easy, as is well pointed out by Mr. Justice Jackson, for the Congress to have clearly set forth its desire that tax liens should draw interest until payment. Congress has not done so."

Finally, if we adopt the Government's position, it can well be seen how it could easily result in liquidation, a vice which the framers of the Chandler Act sought to eliminate, interfere with the orderly administration of the debtor's estate, and be unfair to other creditors.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

HENRY HAMMER,
Attorney for Respondents.

APPENDIX

CHAPTER X—CORPORATE REORGANIZATIONS

Sec. 106. For the purposes of this chapter, unless inconsistent with the context—

(1) "claims" shall include all claims of whatever character against a debtor or its property, except stock, whether or not such claims are provable under Section 63 of this Act and whether secured or unsecured, liquidated or unliquidated, fixed or contingent;

* * *

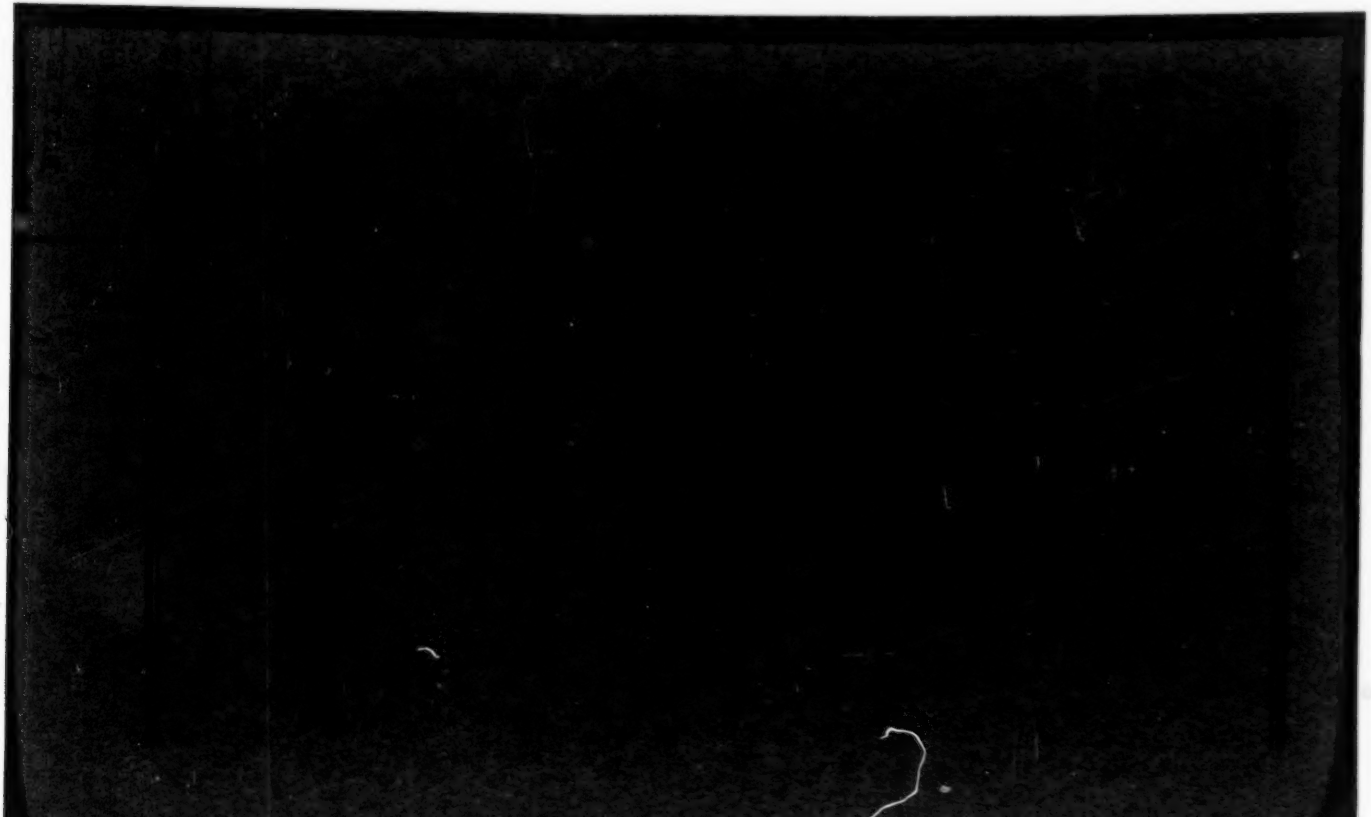
(4) "creditor" shall mean the holder of any claim;

* * *

(6) "debts" shall include all claims;

* * *

(11 U. S. C. 1946 ed., Sec. 506.)



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